

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

IRA R. LEON,)	
)	
Petitioner,)	8:14CV16
)	
v.)	
)	
STATE OF NEBRASKA, and SCOTT)	MEMORANDUM AND ORDER
FRAKES, Director of the)	
Nebraska Department of)	
Corrections,)	
)	
Respondents.)	
_____)	

This matter is before the Court on petitioner's Notice of Appeal (Filing No. [34](#)), which was filed 45 days after the Court entered judgment in this case.

Federal Rule of Appellate Procedure 4(a)(1)(A) sets forth that a notice of appeal in a civil case must be filed within 30 days of the entry of judgment. This requirement is both "mandatory and jurisdictional." [Burqs v. Johnson Cnty., Iowa, 79 F.3d 701, 702 \(8th Cir. 1996\)](#). A district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause, provided that the party moves for the extension of time within 30 days of the expiration of the 30-day period set out in Rule 4(a)(1)(A). [Fed. R. App. P. 4\(a\)\(5\)\(A\)\(ii\)](#). In addition, if a party files one of the post-judgment motions listed in Rule

(a)(4)(A), the time to file the appeal runs from the entry of the order disposing of the motion. [Fed. R. App. P. 4\(a\)\(4\)\(A\)](#). An untimely notice of appeal cannot serve as a motion for extension of time to file an appeal. [Burgs, 79 F.3d at 702](#).

Here, the Court entered a final judgment dismissing this case on July 6, 2015. Petitioner filed his Notice of Appeal on August 20, 2015. He did not file any post-judgment motions that would extend the time to file a notice of appeal. In addition, he did not move to extend the time to file a notice of appeal. Accordingly, the Court finds petitioner did not file a timely notice of appeal.

IT IS ORDERED that the Notice of Appeal was not timely filed. Petitioner will not be allowed to proceed in forma pauperis on appeal. The clerk of the court is directed to send a copy of this order to the Eighth Circuit Court of Appeals.

DATED this 7th day of October, 2015.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

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